



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

DANIEL HEALING,
Plaintiff,

vs.

TOM NAPIER et al.,
Defendants.

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CIVIL ACTION NO. 8:05-2744-HFF-WMC

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE AND
DENYING PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER

Plaintiff has filed a motion for a temporary restraining order in this case. Plaintiff is proceeding *pro se*. The matter is before the Court for review of the report and recommendation (report) of the United States Magistrate Judge in which he suggests that Plaintiff's motion be denied. The report is made in accordance with 28 U.S.C. § 636 and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the report on September 29, 2005. Plaintiff filed his objections to the report on October 12, 2005. The objections consist of, among other things, repeated ill-considered allegations regarding the Magistrate Judge's competence, recurring statements concerning the competence of Defendant Napier, and conclusory allegations regarding fraud and constitutional violations.

In light of Plaintiff's submission, and in the interest of justice and an abundance of caution, the Court has made a *de novo* review of the entire report. Simply stated, nothing in the record, including the complaint and the motion for a temporary restraining order, clearly establish that immediate and irreparable injury, loss, or damage would result to Plaintiff if the requested relief was not granted. Therefore, the Court will enter judgment accordingly.

In sum, after a thorough review of the report and the record in this case pursuant to the standards set forth above, the Court adopts the report and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's motion for a temporary restraining order will be **DENIED**.

In light of 28 U.S.C. § 636 and Local Rule 73.02 for the District of South Carolina, Plaintiff's motion to remove the Magistrate Judge from this case is also **DENIED**.

IT IS SO ORDERED.

Signed this 2nd day of November, 2005, in Spartanburg, South Carolina.

/s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has a right to appeal this Order within thirty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.